IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11602 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPATBHAI MAHADEVBHAI MONIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11602 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/11/2003

ORAL JUDGEMENT

1. By way of filing this Special Civil Application,

the petitioner has challenged the order of detention passed against him by the District Magistrate, Surat, on 17.7.2003 in exercise of powers under sub-Section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act") directing the detention of the petitioner and the petitioner came to be detained in pursuance of the said order on 18th July, 2003.

2 The grounds served upon the petitioner and as placed on record reveal that at village Kalol, Taluka Bardoli, District Surat, wife of the petitioner, Smt. Vimlaben Ganpatbhai Manya was holding the licence to run fair-price shop from 16th March, 1989 and was permitted to distribute essential commodities at subsidised rate through public distribution system. The fair-price shop was running in the name of Pandit Dindayal Grahak Bhandar and such fair-price shop was totally managed by the present petitioner. On 25th March, 2003, the said fair-price shop was checked and inspected by the team of Director, Civil Supplies Department, Gandhinagar, and thereafter the Civil Supplies Department of the State Government also inspected the said shop on 25th March to 27th March and 8th April, 2003. The petitioner was found present at the said shop. Again the Civil Supplies Department of the State Government inspected the fair-price shop on 2nd July 2003 to 12th July, 2003 and at that time also the petitioner was found present and by both the authorities the panchnama was drawn. It was found that wheat, rice, sugar and kerosene were received by the petitioner in the month of May, 2002, October, 2002 and March 2003 to be distributed among ration-card holders and which was credited to the stock of the shop. Some quantity was obtained in excess by the petitioner as per the allegation. The said quantity of the essential commodity and the quantity obtained in excess according to the allegation was disposed of by the petitioner earning profit in open market. It was found that the petitioner and his wife in collusion with each other, after obtaining special quota for the Scheduled Tribe persons which was to be distributed to the Scheduled Tribe persons was sold by the petitioner and his wife through bogus bills in the open market. When the stock was examined, there was excess in stock of wheat and rice while the stock of kerosene and sugar was less. The department of the Director of Food and Civil Supplies recorded the statements of all the ration-card holders, made necessary enquiries and as per the details mentioned in the grounds served upon the petitioner, the order impugned came to be passed against the petitioner as well

as his wife, Smt. Vimlaben and both were detained. Smt. Vimlaben has filed another petition being Special Civil Application No.11603 of 2003 in this Court.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner, learned AGP Ms.Mita Panchal, for the respondents No.1, 2 and 3 and learned Additional Central Government Standing Counsel Ms. Davawala for respondent No.4 were heard at length. The affidavit-in-reply filed on behalf of respondents nos.1 and 2 and as placed on record and the affidavit-in-reply filed on behalf of respondent no.4 are taken into consideration.

4. Out of various grounds raised on behalf of the petitioner and controverted by the respondents, it appears from the rival contentions that this matter can be disposed of and decided on the sole ground of delay in passing the detention order.

5 As per the admitted fact, the checking was made by the team of Director of Civil Supplies, Gandhinagar, on 25th March, 2003 to 27th March, 2003 and on 8th April 2003. Thereafter Civil Supplies Department of the State Government was informed by the Director of Civil Supplies Department, Gandhinagar. On 2nd July, 2003 to 12th July, 2003 the Civil Supplies Department of the State Government again checked the fair-price shop and the records of the shop of the wife of the petitioner and made verification. Ultimately, the order came to be passed only on 17th July, 2003. The allegation and contention raised on behalf of the petitioner are that though the team of the Director of Civil Supplies Department made the checking on 25th March, 2003 to 27th March, 2003 and on 8th April, 2003 the order of detention came to be passed only on 17th July, 2003 i.e. almost after 3 months. By way of explanation, it is contended on behalf of the respondent-Government that as per the guidelines issued by the Government, the Civil Supplies Department again checked and inspected the said shop on 2nd July, 2003 to 12th July, 2003. A justification is also attempted to be made that this investigation was necessary being further investigation. From these rival contentions and going through the record, the question arises that whether there was any necessity for the concerned Civil Supply Department to recheck. The inspection made by the team of Directorate, which was carried out on 25th March, 2003 to 27th March, 2003. On perusing the record and the material collected by the team of Director of Civil Supplies during the inspection carried out on 25th March, 2003 to 27th March, 2003 and on 8th April, 2003, the order of detention could not have

been passed. Instead, in the month of July a further enquiry was made by the Civil Supplies Department of the State Government causing delay in passing the order by three months. The delay caused in passing the order is always fatal to the further detention of the detenu. In the facts and circumstances of this case, it clearly appears that the orders could have been passed on the material collected by the team of Director of Civil Supplies, Gandhinagar. But, the order came to be passed only on 17th July, 2003 with a delay of three months. There was no reason for the sponsoring authority to wait and rely upon the verification and further enquiry made by the local Civil Supplies Department and that the justification and explanation for causing the delay in passing the order cannot be accepted. In this view of the matter, the order impugned in this petition is required to be quashed and set aside only on this ground.

6. In the result, this Special Civil Application is allowed. The order impugned in this Special Civil Application passed on 17.7.2003 by the District Magistrate, Surat, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS permitted.

(J.R. Vora, J.)

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